

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: June 12, 1996

TO : James J. Palermo, Acting Regional Director
Region 3

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: E.C.C. Electrical Construction Corp.
Case 3-CA-20055

512-5009-1500

This case was submitted for advice as to whether the Employer violated Section 8(a)(1) by sending letters to the Union and its organizer threatening to file civil lawsuits against them because of their salting activities.¹

FACTS

The Employer has been the subject of a salting campaign by Local 41, IBEW (the Union). The Region has issued complaint in Case 3-CA-19661, alleging that the Employer violated Section 8(a)(3) by refusing to consider for hire 31 named employee-applicants, including John Pavlovic, an organizer for the Union. Pavlovic apparently submitted two different resumes to the Employer. These resumes differ in significant ways; for example, one states that Pavlovic was a graduate of a program in electrical construction given by Alfred University, while the other resume states that Pavlovic was a graduate of a Union apprenticeship program and various union organizing programs. The Employer asserts that it would not consider Union applicants for hire because it did not trust their veracity and would not take the time necessary to investigate their applications. In the course of its organizing campaign, the Union convinced three of the Employer's four electricians to join the Union; as a consequence, all three left their employment with the Employer.

On May 1, 1996, the Employer's attorney sent letters to the Union and to Pavlovic stating that the Employer intended to sue both the Union and Pavlovic, alleging that

¹ The Union's request for Section 10(j) injunctive relief will be addressed in a separate Advice Memorandum.

they have intentionally interfered with the Employer's business relations. The letters accuse the Union and Pavlovic of engaging in "fraudulent and subversive behavior." In a position paper submitted to the Region, the Employer's attorney states that the lawsuit will attack, inter alia, the Union's "stripping" campaign, Pavlovic's submission of "fraudulent" resumes to the Employer, the Employer's belief that the Union has contacted other employers and "slander[ed]" the Employer to discourage these employers from contracting with the Employer, and has engaged in other activity to "make sure" that the Employer "obtains no job over \$10,000.00."

To date, the Employer has not filed such a lawsuit.

ACTION

We reached the following conclusions concerning this case:

Initially, we noted that a threat to sue in retaliation for the exercise of Section 7 activity violates Section 8(a)(1),² even where the Section 7 activity does not involve the filing of a charge with the Board.³

However, in deciding whether complaint is warranted, the Region will have to decide whether the Employer's threat to sue attacks protected⁴ or unprotected⁵ activity.

² See Clyde Taylor Co., 127 NLRB 103 (1960).

³ See, e.g., Prime Time Shuttle International, 314 NLRB 838, 842-43 (1994) (employer violated Section 8(a)(1) by threatening to sue discharged union activists if they continued to communicate with other employees); GHR Energy Corp., 294 NLRB 111, 1014 (1989) (employer violated Section 8(a)(1) by threatening to sue union official because he testified before state agency and U.S. Senate committee concerning effects on employees of employer's alleged environmental pollution).

⁴ See GHR Energy, *supra*, at 1014.

⁵ In United Aircraft Corp., 192 NLRB 382, 384 (1971), the Board found that an employer's threat to sue a union was

We note that the Employer is apparently arguing that the Union and Pavlovic have engaged in unprotected activity.

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not unlawful under Clyde Taylor, supra. However, the Board noted that the threat to sue was part of an effort to settle numerous claims arising out of a bitter strike and that the employer had ultimately prevailed in a civil suit against the union; thus, it was clear that the employer had "good grounds" for threatening to file, and ultimately filing, the lawsuit. Id. at 384. Here, the merits of the Employer's threatened lawsuit have yet to be determined.